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COMMENTS

Application No: 10/727,193; , Filed: December 3, 2003; Our Ref: EMC-101(US)(C)
Current Status: RCE with claim amendment is filed on April 20, 2010

Dear Mr. MacIlwinen:

Per our phone conversation I request a 1-hour in-person interview regarding the above case. The Applicant would like to present arguments for allowance of the submitted claims. In particular, the agenda for the requested in-person interview may be as follows:

1. Presenting arguments contained in the filed RCE in regard to clarification in the independent claims of the content of the collected data (added in the filed RCE) to overcome references quoted by the Examiner for allowing the claims.

2. If no agreement is reached in 1 above, reviewing of teaching for combining of Khanokar et al. and Wiley et al.:

- a) which procedure is faster in Khanokar et al. or in Wiley et al.; the Applicant concluded that based on the disclosure of Khanokar et al. in col. 7, lines 14-22, stating that "the determination of whether to broadcast the event object as an intrusion alarm is made nearly instantaneously upon receipt of the event object", the procedure of Khanokar et al. using parsing algorithm may be faster (but at least not slower) than in Wiley et al. (i.e., what can be faster than instantaneous?), contrary to what is alleged by the Examiner.

Also, for details in reference to combining of Khanokar et al. and Wiley et al., see arguments presented by the applicant in the Reply Brief submitted to the patent Office on August 23, 2010 in a relevant case Serial Number 11/441,998 filed May 26, 2006 in the specific comment 2.k (Parts 1 and 2) on pages 22-27.

- b) reviewing "teaching away", "reasonable expectation of success", "problem to be solved", "obvious to try", and/or "reason to combine" concepts as possibly applied to combining Khanokar et al. and Wiley et al. in light of new KSR guidelines published by the USPTO on September 1, 2010; Federal Register, 75, No. 169, 53643 Examination Guidelines Update: Developments in the Obviousness Enquiry After KSR v Teleflex. A significant difference from the previously published guidelines is found in the more even balance between examples where validity was affirmed and those where an objection of obviousness succeeded. Possible relevant references in the new KSR guidelines may include (but may not be limited to) the following recent Federal Circuit cases resulted in succeeding of objections against obviousness:
- *Rolls-Royce, PLC v. United Technologies Corp.* 603 F.3d 1325 (Fed. Cir. 2010), obvious to try;
 - *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.* 567 F.3d 1314 (Fed. Cir. 2009)', combining would work against intended purpose;
 - *Crocs, Inc. v. U.S. International Trade Commission*, 598 F.3d 1294 (Fed. Cir. 2010), teaching away;
 - *In re Omeprazole Patent Litigation*, 536 F.3d 1361 (Fed. Cir. 2008), technical problem to be solved;
 - *Elsai Co. Ltd. v. Dr. Reddy's Labs., Ltd.*, 533 F.3d 1353 (Fed. Cir. 2008), no reason to modify;
 - *Procter & Gamble Co. v. Teva Pharmaceuticals USA, Inc.* 566 F.3d 989 (Fed. Cir. 2009), no reasonable expectation of success;
 - *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350 (Fed. Cir. 2007), 492 F.3d 1350 (Fed. Cir. 2007), no predictability or reasonable expectation of success;
 - *In re ICON HeaLTH & Fitness, Inc.*, 496 F.3d 1374 (Fed. Cir. 2007), problem to be solved.

**** ATTACHMENT TO INTERVIEW SUMMARY ****

3. If no agreement is reached in 1 and 2 above, discussing claim amending options (e.g., proposed by the Applicant and/or by the Examiner) with additional limitations significant enough to overcome references quoted by the Examiner.

If you have any questions, do not hesitate to contact me. I will call you later today or tomorrow to answer possible questions and set a date for the in-person interview.

Best Regards,
Anatoly Frenkel